United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 06-1494**
	)	**Issued: October 18, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Birmingham, AL, Employer	)	

Appearances:
James A. Haggerty, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 8, 2006 nonmerit decision denying his request for merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this nonmerit decision. The last merit decision of record was the Office's February 1, 2005 decision terminating appellant's compensation for refusal of suitable work. Because more than one year has elapsed between the last merit decision and the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.[1]

ISSUE

The issue is whether the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[1] *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

FACTUAL HISTORY

On November 6, 2003 appellant, then a 35-year-old mail handler, filed an occupational disease claim alleging that he sustained a left upper extremity condition due to the repetitive duties of his job. The Office accepted that appellant sustained an injury to his left ulnar nerve. He stopped work on October 25, 2003 and received appropriate compensation for periods of disability.

In a report dated November 5, 2003, Dr. Gregory James, an attending Board-certified neurologist, stated that appellant might be able to work beginning November 17, 2003 if he did not engage in frequent flexion of his left elbow. In a report dated November 20, 2003, he stated that appellant's condition had improved and that his electromyogram (EMG) and nerve conduction velocity (NCV) testing of the left arm yielded normal results. Dr. James sent appellant for additional diagnostic testing because he had a flare-up of symptoms when he returned to limited-duty work for two half-days beginning December 20, 2003. The findings of February 10, 2004 EMG and NCV testing revealed normal results with no evidence of left ulnar nerve entrapment.

In a report dated February 19, 2004, Dr. Richard Rivard, a Board-certified neurologist and Office referral physician, examined appellant and indicated that he could lift up to 20 pounds, frequently engage in fingering and handling with his left hand and frequently engage in holding, grasping and turning with his left upper extremity.

On March 5, 2004 the employing establishment offered appellant a limited-duty position as a modified clerk. The position included such duties as placing trays on racks, placing labels on machines, providing relief for the lobby and guard shack and working the mini case. It required lifting up to 25 pounds and fingering and handling with the left upper extremity on a frequent basis (*i.e.*, up to 5½ hours per day).

By letter dated March 23, 2004, the Office advised appellant that the offered position was suitable. Appellant refused the offered position, indicating that it required too much use of his hands. He claimed that the position required 3,000 trays of mail to be placed on racks and labels to be placed on each tray and that working the mini cases required using both hands to stick mail in slots. Appellant asserted that the duties would require him to use his hands for more than five and a half hours per day.

By decision dated July 23, 2004, the Office terminated appellant's compensation effective July 23, 2004 on the grounds that he refused an offer of suitable work.

Appellant requested a review of the written record by an Office hearing representative. By decision dated and finalized February 1, 2005, the Office hearing representative affirmed the Office's July 23, 2004 decision.[2]

[2] Appellant submitted additional argument in support of his claim, which was similar to previously submitted argument.

In an undated letter received by the Office on February 2, 2006, appellant argued that the modified clerk position offered by the employing establishment would have exceeded his work restrictions because it would have required excessive use of his hands and arms. He discussed various duties of the job, including placing trays on racks, placing labels on trays and working the mini cases and posited that these tasks were unduly repetitive. Appellant enclosed an "HBK EL-505" form which he claimed showed what a proper limited-duty job offer would entail. In a March 24, 2005 report, Dr. James indicated that appellant presented himself on that date with complaints of pain and numbness in his arms. He recommended that appellant undergo additional diagnostic testing. Appellant submitted the findings of March 25, 2005 NCV testing which revealed normal results.[3] He also resubmitted a copy of the March 2005 job offer and a copy of a February 19, 2004 "evaluation center summary" which delineated work restrictions.

By decision dated February 8, 2006, the Office denied appellant's request for further review of the merits of his claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[4] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[5] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.[6] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[7]

ANALYSIS

The Office accepted that appellant sustained an employment-related injury to his left ulnar nerve. Appellant refused a modified clerk position that the employing establishment offered in March 2004 and the Office terminated his compensation effective July 23, 2004 on the grounds that he refused an offer of suitable work.

Appellant requested reconsideration of his claim in February 2006 and argued that the modified clerk position offered by the employing establishment would have exceeded his work

[3] Appellant also submitted photographs of his work space.

[4] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[5] 20 C.F.R. § 10.606(b)(2).

[6] 20 C.F.R. § 10.607(a).

[7] 20 C.F.R. § 10.608(b).

restrictions because it would have required excessive use of his hands and arms. He discussed various duties of the job and posited that these tasks were unduly repetitive. The submission of this argument did not require the Office to conduct further merit review of his claim. The Board has held that the submission of evidence or argument which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[8] Appellant had already made similar arguments in the past that the modified clerk position was not within his work restrictions. He submitted a copy of the March 2005 job offer and a copy of a February 19, 2004 "evaluation center summary" which delineated work restrictions, but these documents had already been submitted and considered by the Office.

Appellant submitted a March 24, 2005 report in which Dr. James, an attending Board-certified neurologist, indicated that he presented himself on that date with complaints of pain and numbness in his arms. He submitted the findings of March 25, 2005 NCV testing which revealed normal results. However, these reports are not relevant to the underlying issue of the present case as they do not relate to appellant's medical condition at the time the modified clerk position was offered in 2004 and do not contain any opinion on his ability to work. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[9] Appellant also submitted an "HBK EL-505" form which he claimed showed what a proper limited-duty job offer would entail and photographs of his work space, but these documents are not relevant as they do not lend any support to appellant's argument that the particular job he was offered in March 2004 was unsuitable.

Appellant has not established that the Office improperly denied his request for further review of the merits of its February 1, 2005 decision under section 8128(a) of the Act, because the evidence and argument he submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[8] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[9] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 8, 2006 decision is affirmed.

Issued: October 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board